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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,229	04/22/2004	Syed Rizvi	001240	3228
29569	7590	05/12/2005	EXAMINER	
JEFFREY FURR 253 N. MAIN STREET JOHNSTOWN, OH 43031			PHILLIPS, CHARLES E	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,229	Applicant(s) RIZVI, SYED	
	Examiner Charles E. Phillips	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22, 24, 28 and 31-36 rejected under 35 U.S.C. 102(b) as being anticipated by Smith.

Smith meets the structural limitations of claim 22 as follows:

see tray 10, triangular in nature, with upstanding walls 20, 22 and 30 and perforated bottom 28. The front wall 30 is “angled” in that it extends from the bottom at 90 and is accurate in nature. The desired location of use of the instant device does not further limit these claims and Smith is capable of such use. Re: claim 24 see screws 62. Claims 32-36 are included here, as they do not further structurally limit claim 22 as they merely call for an intended use. Re: claim 28, the back corner of Smith is open at 12. Re: claim 31, the only corner referred to in claim 22 is that of the bath and Smith meets this at 12 of Fig. 1.

Claims 22, 23 and 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Maurus.

See Fig. 8, which renders this device usable as recited here i.e. to be mounted in order to receive support from underlying walls. The upstanding sidewalls are seen as bridged by an angular front wall, which is accurate.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Wulff.

Smith is applied as in the rejection of claim 22 supra. Wulff teaches a shower corner shelf with a sloped surface 25 to promote drainage. To provide for such an expedient of any desired degree and any desired surface of Smith, would have been prima facie obvious to the ordinary artisan in that its use is taught in an identical art environment. Re: claim 38, as these holes are in different walls they meet the limitation "different".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 and 37-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

No antecedent is found in claim 22 for "said two side walls with a curved edge" and likewise in claim 37, line 5.

Claims 26, 27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, as applied supra in view of Nield.

Nield teaches mounting holes 19 in shelf sidewalls for attachment means. To provide for this scheme in lieu of that taught by Smith at 36 would have constituted substitution of an obvious alternative mechanical equivalent to the ordinary artisan.

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Smith teaches the screw connection at 62. Re: claim 27, the size of the device would have constituted an obvious expedient of choice in design depending on intended use.


THIS ACTION IS MADE FINAL. See MPEP § 706.02(I)(3). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Charles E Phillips at telephone number (571) 272-4893.

Phillips/PJ

5/6/05


Charles E. Phillips
Primary Examiner